

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY MACK,	§	
	§	No. 34 and 51, 2006
Defendant Below,	§	(Consolidated)
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0502007128
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 12, 2006
Decided: August 28, 2006

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 28th day of August, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) Gary A. Mack appeals from his conviction, following a jury trial, of first degree robbery. He argues that the State failed to present sufficient evidence that he displayed what appeared to be a gun during the bank robbery. We find no merit to this contention, and affirm.

2) On February 8, 2005, Mack entered a branch of Commerce Bank located in Governors Square Shopping Center, New Castle County, Delaware. He approached a teller, Kristy Burns, and handed her a note that read, “Give me all your money or I’ll

kill you, I have a gun, all the money.” At the same time, Mack opened his jacket and stuck out what appeared to Burns to be the front of a gun. Burns testified that she was not sure whether the gun was real. She also admitted that, when reporting the incident to the police, she told them that the weapon looked like it was made of plastic and that it looked fake.

2) In response to Mack’s demand, Burns handed him a dye-pack that looked like stacks of twenty dollar bills. Mack fled, but was apprehended at his home after the police found the get-away car in his driveway. On questioning, Mack admitted that he robbed the bank, but denied carrying a gun. Mack said that he was carrying a knife during the robbery, and the police never found a gun.

3) Mack’s sole argument is that, since Burns thought the gun was a fake, he cannot be convicted of first degree robbery. According to the indictment, Mack committed first degree robbery by displaying what appeared to be a gun. Under settled law, the State need not prove that a defendant actually possessed a gun or other deadly weapon during the commission of the crime.¹ Rather, the State need only prove that: i) the victim believed that the defendant possessed a weapon; and ii) the defendant made some objective physical manifestation that he was armed.² Mack

¹*State v. Smallwood*, 346 A.2d 164 (Del. 1975).

²*Deshields v. State*, 706 A.2d 502 (Del. 1998).

concedes that he manifested having a gun by opening his jacket and showing Burns an object that looked like a gun. Since Burns did not believe him, however, Mack says that he did not display what “appeared” to be a gun.

4) In pressing this argument, Mack ignores Burns’ trial testimony. She testified that Mack opened his jacket and “stuck the front of the weapon out.” It appeared to be a black gun, but Burns “couldn’t really tell what it was made of, if it was real or if it was not.” Nothing in our case law requires that a victim be absolutely certain that the defendant is armed. The victim need only hold a *belief* that the defendant may be armed, based on some objective manifestation of the presence of a weapon. Burns was not sure whether Mack was armed or not, but her uncertainty was enough for a reasonable juror to conclude that he displayed what appeared to be a deadly weapon.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice